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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, 1973
No. 72-1628

TELEPROMPTER CORPORATION and CONLEY ELECTRONICS CORPORATION,

Petitioners,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., CALVADA PRODUCTIONS, a joint venture, JACK CHERTOK TELEVISION, INC., and DENA PICTURES, INCORPORATED,

Respondents.

On Certiorari to the United States Court of Appeals for the Second Circuit.

Motion for Permission to File Brief Amici Curiae in Support of Respondents and Brief.

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COLUMBIA BROADCASTING SYSTEM, INC., CALVADA PRODUCTIONS, a joint venture, JACK CHERTOK TELEVISION, INC., and DENA PICTURES, INCORPORATED,

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On Certiorari to the United States Court of Appeals for the Second Circuit.

Motion for Permission to File Brief Amici Curiae in Support of Respondents and Brief.

Pursuant to Rules 35 and 42(3) of the Rules of this Court, the Writers Guild of America (WGA), the Screen Actors Guild (SAG), and the Directors Guild of America (DGA) (all sometimes referred to simply as "Guilds") respectfully move the Court to grant them permission to file a Brief Amici Curiae herein in support of Respondents on the following grounds:

1. The Guilds have requested permission of the parties herein to file a Brief Amici Curiae. Respondents have given their consent. On December 3, 1973, petitioners Teleprompter Corporation and Conley Electron-

ics Corporation through their attorneys advised that "we do not consent to the filing of the brief but do not plan to file an opposition" to a motion for leave to file a Brief Amici Curiae.

2. Each of the Guilds is the collective bargaining agent of employees who collectively constitute the artistic and creative personnel of the motion picture and film television entertainment industry.

(a) WGA represents all writers employed by producers (including Respondents) for the purpose of preparing literary material for theatrical motion pictures and for entertainment motion pictures produced primarily for exhibition over television and all writers of live TV programs.

(b) SAG represents all actors employed by producers referred to in (a) above and in the motion picture industry generally.

(c) DGA represents all directors employed by producers referred to in (a) above and in the motion picture industry generally.

3. Each of the Guilds has collective bargaining agreements with producers of films produced for or exhibited over television. Said films, as in the instant case, are invariably protected by copyright. These collective bargaining agreements are to a large degree premised on the producer's ownership of the films and of the copyright and on the producer's control of the distribution and consequently of the exhibition of the films. Each of the agreements establishes minimum wage or salary scales for employment, and each provides for additional compensation in the form of residual payments to these creative and artistic employees for exhibition of theatrical pictures on television and

for repeat exhibition of television films (after the initial showing). The minimum residual payments required are, in the case of theatrical films, based on the proceeds derived by the producer (or distributor) of the films from the licensing of said films for exhibition over television. The patterns of employment and compensation of members of the Guilds will therefore be directly affected by the outcome of this matter, and consequently the Guilds are each vitally interested.

4. Additionally, in the case of literary materials created for and on which the films are based, various rights are reserved to the writers. The collective bargaining agreement provides in part, "Insofar as such literary material is covered by the copyright of the television film, the rights reserved to the writer hereunder will be held in trust for such writer by the owner of the copyright." (Art. 50, Writers Guild of America 1973 Theatrical and Television Film Basic Agreement. Such a provision has been part of WGA's collective bargaining agreements since 1956.)

5. The question presented is whether the Court of Appeals properly imposed copyright liability on petitioners for importing distant signals (which are copyrighted motion pictures in electronic form) and reproducing and rebroadcasting them for profit to their subscribers in the manner delineated in the record. Respondents (or those in privy with them) are obligated to make residual payments to talent for television broadcasts of such motion pictures under circumstances elaborated on in our brief on the merits. Petitioners presently appropriate for their own profit the television broadcasts of such motion pictures, which originate at distant stations which have paid for the license to broadcast the motion pictures. Petitioners claim the

right to so appropriate and rebroadcast the pictures without payment to Respondents, the distributor, the originating television broadcaster or the creative talent.

6. The Guilds wish to make clear the far reach which the decision herein may have on employment and compensation patterns which have been created by a long history of collective bargaining.

Respectfully submitted this 17th day of December, 1973.

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Attorney for Amici Curiae, Writers Guild of America, Screen Actors Guild, and Directors Guild of America.

Of Counsel:
WILLIAM BERGER,
WILLIAM B. HAUGHTON,
SELVIN AND BARTH.

INTRODUCTION.

A. Interest of Talent Guilds.

The Talent Guilds who have joined in this Brief represent the actors, writers and directors whose creative talents are utilized in the production of theatrical and television motion pictures.[1] These artists have a vital concern in the outcome of this case. Their interest is a fundamental one, namely, that their livelihood would be affected and, in fact, seriously jeopardized if Petitioners' cable television stations and other like systems were held to be entitled to freely pick up the television broadcasts of copyrighted motion pictures and television programs and transmit them to their paying subscribers without liability for copyright infringement.

Central to an exposition of the economic detriment which would be sustained by members of the Talent Guilds from a recognition of Petitioners' position is an understanding of the structure and pattern of compensation to talent which has long been established under collective bargaining contracts. These contracts exist between the Talent Guilds and the motion picture producers and television networks and stations. The pattern is historical, unique and indigenous to the nature of the Television Industry, and it revolves on the owner-

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[1]Screen Actors Guild (SAG) affiliated with AFL-CIO; membership over 29,000 members; represents performers employed in the production of theatrical and television motion pictures and television filmed commercials. Writers Guild of America (WGA) membership about 3,000 writers; represents writers who write for theatrical motion pictures, television motion pictures and live and recorded television programs. Directors Guild of America (DGA) membership over 4,000; represents directors, assistant directors, associate directors and stage managers who direct performers in theatrical motion pictures, television motion pictures and live and recorded television programs and commercials.

ship of the copyright and on the control of the distribution and exhibition of the films which have been produced by the creative talent of the Guilds' members.

B. Television Payments to Talent Under the Collective Bargaining Contracts Between the Talent Guilds and the Motion Picture Producers and Television Networks and Stations.

Though they differ in detail, the respective collective bargaining agreements of the Talent Guilds follow the same general pattern with respect to payments to talent for television exhibition of theatrical and television pictures. Such payments are generally referred to in the industry as "residuals." The contracts of Screen Actors Guild, the largest of the Talent Guilds, will serve to illustrate the nature of residual payments.

1. Collective Bargaining Contracts of Screen Actors Guild.

The collective bargaining contracts of Screen Actors Guild provide a number of different formulas for the payment of residuals to actors.

For motion pictures produced in the period between August 1, 1960, and January 31, 1966, the SAG collective bargaining contracts require the payment of 3.6% of the distributor's world-wide gross receipts derived from the television exhibition of such motion pictures, for ratable distribution among the actors performing in such motion pictures.

For pictures produced subsequent to January 31, 1966, a formula provides for the payment to each actor appearing in a motion picture, of a percentage of a specified base fee when such motion picture is first telecast and additional percentages when the distribu-

tor's gross receipts from such television exhibition reach certain stated amounts.[2]

For example, a free lance actor (actor engaged for a single picture) who works in a motion picture for a period of one week, is entitled to be paid 30% of a base fee of $300, or $90, when such motion picture is first exhibited on television. When the distributor's gross receipts from television reach the sum of $125,000, an additional 12½% of such base fee becomes payable. Similarly, when such gross receipts reach additional amounts, further percentages of such base fee become payable to the actor.

Actors who perform in motion pictures made primarily for television exhibition are likewise entitled to be paid additional compensation in the form of "rerun fees" each time such picture is retelecast in the same city for up to a total of ten such telecasts. Such fees are each percentages of the actor's original applicable minimum scale and aggregate an additional 225% of such initial minimum applicable scale.[3] Additional amounts equal to 6½% of the rerun fees are also payable to the Producer-Screen Actors Guild Pension and Welfare Fund to provide pension and welfare benefits to actors.

In short, the compensation which actors receive from the television exhibition of the motion pictures in which they appear is directly geared either to the producer's gross receipts from such television exhibition or to the number of times the film is replayed on television. Many years of study and effort have been expended by the Screen Actors Guild in negotiations with motion

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[2]See Appendix, Section A.

[3]See Appendix, Section B.

picture producers to establish this system of compensation, which has proven to be the fairest and most equitable means of compensating actors for the use and reuse of their performances in the television field.[4]

This is so because no one knows, at the time a theatrical motion picture is first shown on television or when a television program is first telecast, how many stations will purchase the right to exhibit the picture or program, or how successful it will be. It is therefore virtually impossible at the time of employment to fix a sum which adequately and fairly compensates actors for their services. If the amount fixed were low and the picture or program attained wide popularity, was repeatedly exhibited on television and returned a very substantial gross income to the producer, the amount might well be unfair to the actor. On the other hand, if the figure fixed were high, it would be unfair to the producer if the results of the telecasting were financially disappointing. In effect, residuals provide the means by which a performer shares in the success of a television program: the greater the use and exposure of the actor, the greater the compensation.[5]

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[4]The principle of additional payment to performers for reuse of their performances had its inception more than 30 years ago in the early collective bargaining contracts between the American Federation of Radio Artists and the radio networks and stations under which radio performers were paid additional compensation when recorded radio programs in which they performed were rebroadcast in the same area at a later time.

[5]The modern collective bargaining contracts between Screen Actors Guild and the film producers provide complicated and sophisticated arrangements for such payments. These include an obligation on the part of the producer to obtain "Assumption Agreements" from its distributor or those who purchase the film or the television rights therein by which such distributor or purchaser becomes directly liable to Screen Actors Guild to make such payments. See Appendix.

Residuals are paid to all actors whose services are utilized in pictures that are shown on television, from stars and featured players down to the small part players and bit players who work at the minimum scale. This latter group comprises the bulk of the membership of the Guild. Such actors work very irregularly and depend on residuals for an important part of their income.[6] Since the inception of the residual structure in the collective bargaining contracts of Screen Actors Guild in 1952, more than 170 million dollars in residual payments have been paid to actors, plus substantial additional amounts paid to the actor's Pension and Welfare Plans.

2. Collective Bargaining Contracts of Writers Guild of America.

The collective bargaining contracts between Writers Guild of America and the film producers provide, as to theatrical motion pictures, for a payment to the writers of the story and screen play of 1.2% of the distributor's world-wide gross receipts from the television exhibition of such motion pictures. In the case of television motion pictures, the collective bargaining agreements provide additional compensation for reruns under a formula similar to that in the SAG agreements.[7] Like actors, writers depend on residuals to achieve an adequate level of compensation for their services.

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[6]Statement Charlton Heston. Hearings before the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, Second Session on S 1006 (1966) p. 207.

[7]The Writers Guild of America 1973 Theatrical and Television Basic Agreement provides rerun fees to writers who receive story and teleplay screen credit for each rerun up to ten, aggregating 225% of the writer's applicable minimum compensation for services in writing the story or teleplay.

3. Collective Bargaining Contracts of Directors Guild of America.

The collective bargaining contracts of Directors Guild of America provide, in the case of theatrical motion pictures, that 1.2% of the distributor's world-wide gross receipts derived from the television exhibition of such motion pictures, shall be paid into the Pension Fund of the Directors Guild. In the case of television motion pictures, they provide additional compensation for reruns under a formula substantially similar to that of the Writers Guild.

C. Relationship of System of Talent Compensation in Television to the Protection of the Producer's Copyright.

The heart of the entire system of residuals provided under the various collective bargaining contracts is the protection which the film producers and their distributors have under the present copyright laws against the unauthorized performance of their copyrighted motion pictures on television. The copyright laws of the United States do not extend copyright protection to a performer in his performance or interpretation of his role in a motion picture, or to the director for his creative talent in directing. Writers, when writing independently, have copyright protection. When working as employees, their work under the copyright laws normally becomes the property of the producer who hires them. Like actors and directors, their right to obtain additional compensation for television use of their work

derives from collective bargaining contracts with their producer employers.

As a result, actors, writers and directors rely on derivative rights long established by collective bargaining contracts between their Guilds and their employers to obtain equitable compensation for the utilization of their creative efforts on television. These rights are in turn grounded on the producer's exclusive right to use the copyright. In brief, it is the license fees which motion picture producers and their distributors receive for the use of their copyrighted motion pictures, and which owners of live and recorded television program material receive for the use of such material, that generate the funds from which residuals are paid.

ARGUMENT.

A. The Position of Petitioners Herein, if Sustained, Would Have the Effect of Depriving Talent of Compensation to Which It Is Entitled When Motion Pictures Are Exhibited Over Television.

The exhibition of motion pictures over television constitutes a major part of present-day television programming. Whether made initially for theatrical or television exhibition, these films are entitled to and receive copyright protection. Under nationwide collective bargaining contracts, actors, writers and directors earn an important part of their compensation from the telecasting and retelecasting of the films. If Petitioners and other cable television stations are allowed to pick up distant signals of copyrighted motion pictures and retransmit them for a fee by wire or cable into the homes of their paying subscribers without obligation to make any payment to the producer, the distributor, or the creative talent for such privilege, actors, writers and directors would suffer a serious and immediate financial detriment. In the first place, it would give to a new sector of the television broadcasting industry, of potentially enormous size and geographical coverage, the right to utilize the results of the performances of actors and of the talents of writers and directors without payment of any compensation therefor.[8]

The subscribers of the cable television stations pay and will continue to pay the stations for pickup and

[8]It is obvious that such stations and systems have literally mushroomed in recent years. See data in briefs of the parties and other amici in this proceeding and in the related No. 72-1633.

broadcasts of the copyrighted works; but the stations and systems do not and will not pay anyone—not the broadcasting network, not the originating station, not the distributor, not the copyright owner, not the talent, nobody. Such appropriation of creative and artistic services is *per* se inequitable and contrary to good conscience.

Moreover, television stations want fresh programs, not those that have already been shown in their area. Consequently the film producers and their distributors would not be able to sell programs to television stations in cities served by cable television stations, at an adequate price, or possibly not at all, if they have either already been shown in such cities or may be shown there later over a cable television station which picks up such programs from distant cities and rebroadcasts them locally. In either case, the distributor's gross revenue would be reduced and the share thereof payable to Talent Guild members proportionately lessened. Thus, talent would suffer in two ways: (a) by being deprived of compensation from the cable television stations when they pick up and broadcast motion pictures from distant cities to their subscribers without authority of the copyright owner; and (b) when the producer or distributor who has the distribution rights, tries to sell the picture in cities served by cable television stations and finds it must either sell at a lower price or lose the sale.

B. Petitioners' Position, if Sustained, Would Create a Deterrent to the Production of New Television Film Programs and Would Depress the Syndication Market From Which Rerun Fees to Talent Are Derived.

Most television film programs are initially exhibited over television networks for their first run. The producer usually loses money or, at the most, may break even from such network exhibition. It must look to the syndication market to make its profit, and the actors, writers and directors who render services in such programs likewise are dependent on the syndication market for rerun fees.

The revenue from this syndication market would be seriously reduced if cable television stations were permitted to import from distant cities and broadcast copyrighted television film programs to their subscribers without payment to the copyright owner. Here one must consider not the present size of the cable television industry, but rather, its impact in the future when such stations and systems have proliferated even more throughout numerous areas of the country.

Then such stations and systems will inevitably be in a position to pick up television film programs from many distant large cities and penetrate numerous cities ahead of the film syndicator. For example, they could import New York programs into Philadelphia; Los Angeles programs into San Francisco; Chicago programs into Detroit, etc. In each case, a part of the viewing audience would be lost to the local television station that later purchases the program from the licensed syndicator. This would create an insurmountable obstacle to the syndicator when it tries to sell the pro-

grams to local stations in such cities. The syndicator could not guarantee the local station that it will be the first station in the area to show such programs because they have already been seen locally by the subscribers to the cable television station. Even if not yet seen, the syndicator could not give such a promise, since there would be no assurance that the cable television stations would not subsequently pick up the programs from a distant city and broadcast them before the local station has been able to schedule its broadcast. The syndicator would thus stand to either lose the sale entirely or be forced to make it at a reduced price in a fragmented viewing market.

As a result, the sale of television programs in syndication in numerous areas throughout the United States would be materially affected. The effect of such curtailment of the potential market might well be to make the continued production of many television programs unprofitable. This could have a serious effect on the employment opportunities of talent which are, at best, sporadic and scarce.

It would also in many cases deprive actors, writers and directors of rerun fees which now constitute a substantial part of their income. For example, assume that a television program has concluded its network run, goes into syndication and is first shown in Los Angeles or in New York. Under the collective bargaining pattern of all the Guilds, rerun fees become immediately payable to the talent involved. These fees may involve a larger outlay for the producer than the total amount derived from its initial showing in a single major city. The producer or distributor expects, however, to make a profit by continuing the syndication in adjacent cities and in numerous other cities throughout

the United States from which it will ultimately realize sufficient revenue to reimburse it for such rerun fees and return a profit. If, however, cable television stations and systems such as those of Petitioners have already brought the program to many such cities in advance of the licensed syndicator, by importing them from a distant city, the syndicator's potential market may be so emasculated as to make any syndication of the program impracticable.

Petitioners' position thus poses a serious threat to the employment and income of the major talent groups in the motion picture and television industries.

C. To Hold That Petitioners Have a License Implied in Law to Broadcast Respondents' Copyrighted Motion Pictures Would Deprive Talent of the Fruits of Their Creative Efforts.

Petitioners contend that if their operations are not, as a matter of law, outside the scope of the copyright law, they should be deemed to have an implied in law license under the copyright law to transmit television programs to their subscribers. This is, of course, but another way of saying that the copyright laws should not be applied to the pick up and rebroadcasting activities of cable television stations. Labeling such claimed exemption an "implied in law license," adds nothing to support Petitioner's position.

As already pointed out herein, payment to talent for the television exhibition of theatrical and television motion pictures is based on the premise that the original employer owns or controls the copyright and is therefore able to derive income from its exploitation in which, under long-established patterns of collective bargaining, such talent shares. To hold that cable tele-

vision stations have an implied in law license to rebroadcast programs, picked up from distant signals, to its subscribers without compensation to the copyright owner would completely nullify this concept. The members of the Talent Guilds could not, of course, share in the income derived by the motion picture producers from such broadcasts, since the producers and their distributors would derive none. Neither could they share in the income which the cable television stations receive, since such systems do not employ talent and have no collective bargaining contracts with the Guilds. Thus, the foundation on which talent has been historically paid for their television services would be destroyed. Certainly, no compelling considerations of public policy require recognition of an implied in law license to achieve such result.

Conclusion.

It is respectfully submitted that the meritorious position of Respondents herein finds further support in the special considerations affecting the major talent groups set forth herein.

Dated: December 17th, 1973.

Respectfully submitted,

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APPENDIX A.

The Following Are the Pertinent Provisions of the 1971 Supplement to Producer Screen Actors Guild Codified Basic Agreement of 1967 Covering Residuals Payable to Actors for Television Exhibition of Theatrical Motion Pictures.

5. Television Exhibition of Theatrical Motion Pictures, the Principal Photography of Which Commenced After January 31, 1966; Supplemental Markets Exhibition of Theatrical Motion Pictures, the Principal Photography of Which Commenced After June 30, 1971.

A. Schedule of Payments

With respect to each theatrical motion picture produced hereunder, the principal photography of which commences after January 31, 1966, which is released by Producer for exhibition on free television anywhere in the world, Producer agrees to pay to each actor whose services are included in such motion picture when telecast compensation not less than the amounts set forth below.

With respect to each theatrical motion picture produced hereunder the principal photography of which commences after June 30, 1971, which is released by Producer for exhibition in Supplemental Markets anywhere in the world, Producer agrees to pay to each actor whose services are included in such motion picture when so released compensation not less than the amounts set forth below.

Where a theatrical motion picture, principal photography of which commenced after June 30, 1971, is released by Producer for exhibition both on free television and in Supplemental Markets anywhere in the world, the distributor's gross receipts from such com-

bined exhibition shall be aggregated for the purpose of applying the formula set forth below.

The term "actor" means those persons covered by this Agreement and includes actors, professional singers, stunt men, airplane and helicopter pilots and puppeteers. Said compensation, herein called television and Supplemental Market fees, shall be computed on the following amounts (hereinafter referred to as base amounts) for the applicable length of engagement:

(1) Actors employed by the day:

Number of Days Worked or Guaranteed, Whichever is Longer	Base Amount
One (1) day	$100
Two (2) days	$150
Three (3) days	$200
Four (4) days	$250

Five or more days shall be covered by the schedule below for all other actors.

All other actors:

Number of Weeks Worked or Guaranteed, Whichever is Longer	Base Amount
One (1) week*	$300
Two (2) weeks*	$400
Three (3) weeks or more	$500

*In applying the foregoing schedule, an actor who works or is guaranteed a fractional week in excess of one week or two weeks shall be deemed to have worked a full additional week.

(2) Television and (if applicable) Supplemental Market fees shall be computed on the foregoing base amounts as follows:

(a) When such theatrical motion picture is initially exhibited either on free television or (if applicable) in Supplemental Markets anywhere in the world, the following percentages of the applicable base amounts shall be due: 30%.

In the following provisions of this subparagraph (a) the term "such gross receipts" means Distributor's gross receipts (as defined in subsection C below, and subject to the 50% limitation provided for in the first sentence of said subsection C with respect to gross receipts derived from Supplemental Markets) from the distribution of such motion picture on free television and (if applicable) in Supplemental Markets.

When such gross receipts of such motion picture amount to $125,000, the following additional percentage of the base amount shall be due: 10%.

When such gross receipts of such motion picture amount to $200,000, the following additional percentage of the base amount shall be due: 25%.

When such gross receipts of such motion picture amount to $300,000, the following additional percentage of the base amount shall be due: 22½%.

When such gross receipts of such motion picture amount to $400,000, the following additional percentage of the base amount shall be due: 22½%.

When such gross receipts of such motion picture amount to $500,000, the following additional percentage of the base amount shall be due: 20%.

After each additional full increment of $100,000 of such gross receipts of such motion picture in excess of $500,000, the following additional percentage of the base amount shall be due: 10%.

Notwithstanding the foregoing provisions of this subparagraph (a), as to such motion picture, principal photography of which commenced after January 31, 1966, but prior to July 1, 1971, if the first payment to an actor made after July 31, 1971 pursuant to this subparagraph (a) is a payment other than the payment due with respect to initial free television exhibition and other than payment due at the $125,000 level of gross receipts, such first payment made after July 31, 1971, shall be 2½ percentage points less than the applicable percentage specified in this subparagraph (a). For example, if the first such payment made to an actor after July 31, 1971, is the payment provided for at the $200,000 level of gross receipts, the payment shall be 22½% of the base amount; if the first such payment is the payment provided for at the $300,000 level of gross receipts,

the payment shall be 20% of the base amount; and so forth. There shall only be one such reduction per actor for any particular motion picture.

(b) Prime Time Network Exhibition:

Not later than thirty (30) days after the first network exhibition on free television of any such motion picture in the United States, occurring in whole or in part during prime time, there shall be due and payable to actor (as a non-returnable advance against the payments due under the foregoing schedule) not less than 70% of the applicable base amount; provided that any amounts theretofore paid under this Section 5 shall be credited against such 70% payment.

Prime time shall mean 7:00 p.m. to 11:00 p.m.

As used herein, the term "network exhibition" shall mean the telecasting of such picture over the network facilities in the United States of NBC, CBS, or ABC, or any other network hereafter established, for the exhibition of entertainment product by any means, including CATV or satellite distribution; provided, however, that such newly established network shall be deemed included as a "network" only if it exhibits substantially simultaneously (taking into account time changes and delays) in over-all markets substantially comparable to the markets in which the NBC, CBS, or ABC networks presently exhibit. A motion picture shall not be deemed telecast over a television network where it is

telecast (i) on any single regional network presently established and (ii) where it is telecast on any single regional network which may hereafter be established and which does not include New York, Chicago or Los Angeles.

B. Definition of Supplemental Markets

The term "Supplemental Markets" as used in this Agreement means: the exhibition of theatrical motion pictures by means of cassettes (to the limited extent provided in paragraph (1) of this subsection B), pay-type CATV, or Pay Television, as those terms are hereafter defined in this subsection B.

(1) Cassettes: For the purposes of this Agreement, a cassette is any audio-visual device, including without limitation, cassette, cartridge, phonogram or other similar audio-visual device now known or hereafter devised, containing a theatrical motion picture (recorded on film, disc, tapes or other material) and designed for replay on a home-type television screen. The sale or rental of cassettes for replay on a home-type television screen in the home constitutes the "Supplemental Market" for the purposes of this Agreement, insofar cassettes are concerned.

(2) Pay-Type CATV: Exhibition of theatrical motion pictures on home-type television screens by means of transmission by a community antenna television system (CATV) where, in addition to the obligatory general cable charge to the subscriber for the CATV service: (i) a further charge is made for programs selected by the subscriber, or (ii) the subscriber has the option, by making payment, in addition to the standard subscription charge, to receive special programming over one

or more channels which are not available to the subscriber without such additional payment.

(3) Pay Television: Exhibition of theatrical motion pictures on a home-type television screen by means of telecast, cable or closed circuit in which the viewing audience pays to receive the program by making a separate payment for such specific program. Exhibitions in theatres or comparable places by means of telecast or cable is theatrical exhibition and shall not be considered Pay Television.

The term "Supplemental Markets" does not include the exhibition of a theatrical motion picture by cassette or otherwise over a television broadcast station or in theatrical exhibition, and for this purpose "theatrical exhibition" includes the education market, the exhibition of theatrical motion pictures on any commercial carrier (referred to herein as "In-Flight"), such as commercial airlines, trains, ships and buses, and other uses which have been traditionally considered theatrical exhibition of theatrical motion pictures, other than the specific home use hereinabove defined as the "Supplemental Market" for cassettes.

Wherever reference is made in this Agreement to pay-type CATV or Pay Television, such reference shall be deemed to include only those uses of theatrical motion pictures as to which a charge is actually made to the subscriber for the program viewed, or where the subscriber has the option, by additional payment, to receive special programming over one or more special channels. Where no program charge or special channel charge is made to the subscriber in addition to the general charge, the transmission of theatrical motion pictures by the CATV or television facility, including

programming originated by the CATV or television facility, is free television exhibition for the purposes of this Agreement, and such exhibition shall not be considered Supplemental Markets exhibition.

The Producers have agreed to the inclusion of pay-type CATV and Pay Television in the "Supplemental Markets" because under the present pattern of distribution of theatrical motion pictures, pay-type CATV and Pay Television are supplemental to the primary theatrical market. The Producers reserve the right in future negotiations to contend that the pattern of release has changed so that pay-type CATV and/or Pay Television are no longer a Supplemental Market but constitute or are a part of the primary market of distribution of theatrical motion pictures, and that therefore no additional payment should be made with respect to the release of theatrical motion pictures (including those covered by this Agreement) in said markets. Nothing herein shall limit the scope of negotiations on said subject.

C. Definition of Distributor's Gross Receipts

In applying the formula set forth in subsection A (2) of this Section 5, Distributor's gross receipts from the Supplemental Markets (if applicable) shall be included in the formula only to the extent of 50% of the actual amount of such Distributor's gross receipts.

* * *

"Distributor" as used in this Agreement shall mean the Producer when it distributes such motion picture through its own distribution facilities for telecasting on free television or (if applicable) for Supplemental Markets use, and all other Distributors engaged by Producer to distribute such motion picture for telecasting

on free television or (if applicable) for Supplemental Markets use.

* * *

6. Responsibility for Payments.

With respect to all theatrical motion pictures produced hereunder, principal photography of which commenced on or after August 1, 1965, and released to free television, and with respect to all theatrical motion pictures produced hereunder, principal photography of which commenced after January 31, 1966 and released to Supplemental Markets, the following provisions shall be applicable:

A. Distributor's Assumption Agreement—Television and Supplemental Markets

Prior to the commencement of principal photography of each such motion picture in which one or more actors covered by this Agreement renders services, if the Producer is not also the Distributor on free television and (if applicable) in Supplemental Markets of such motion picture, Producer shall obtain from the Distributor having such free television distribution rights or (if applicable) Supplemental Markets distribution rights, and deliver to Guild, a separate written agreement, herein called "Distributor's Assumption Agreement," made expressly for the benefit of Guild as representative of the actors involved, by which such Distributor agrees to assume and pay the amounts payable hereunder by reason of the exhibition of such motion picture on free television or (if applicable) the distribution of such motion picture in Supplemental Markets, when and as the same become due.

APPENDIX B.

The Following Are Pertinent Provisions of the 1971 Screen Actors Guild Television Agreement Covering Residuals Payable to Actors When Television Motion Pictures Are Rerun on Television.

18. Additional Compensation for Reruns and Foreign Telecasts.

(a) The salary paid to the player for his services in a television motion picture shall constitute payment in full for the telecasting of such motion picture once in each city in the United States and Canada in which any television broadcasting stations are now located and once in each city in the United States and Canada in which any television broadcasting stations are hereafter for the first time established.

(b) Rerun Formula in the United States and Canada

A television motion picture which has been telecast not more than once in any city in the United States and Canada is in its first run. A television motion picture which has been telecast more than once, but not more than twice, in any city in the United States and Canada, is in its second run. A similar test applies in determining when a television motion picture is in its third and succeeding runs.

If the Producer desires to acquire the right to telecast any television motion picture for more than one run in the United States and Canada, the employment contract of each player engaged therein shall contain a separate provision for additional compensation for reruns, which shall be not less than the amounts set forth below:

(1) *Second and third runs, where such runs include telecasting of the picture over a television network in prime time:*

a) For the second run, player shall be paid 50% of his total applicable minimum salary for the picture plus the percentages set forth below of the difference between the player's total applicable minimum salary for the picture and the player's actual salary for the picture which, for this purpose, shall be deemed not to exceed $1,500:

Pictures made for the 1971-72 season—10%
Pictures made for the 1972-73 season—12%
Pictures made for the 1973-74 season—15%

b) For the third run, player shall be paid on the same basis as set forth under (a) above, except that the figure "50%" shall read "40%".

c) Where an individual contract existing on July 1, 1971, provides for rerun compensation for the 2nd or 3rd run in network prime time in excess of 50% or 40%, respectively, of the player's total applicable minimum salary for the picture, the payment hereinabove provided for in excess of 50% or 40%, respectively, of the player's total applicable minimum salary for the picture, shall be credited against such rerun compensation provided for in the player's individual contract which is in excess of 50% or 40%, respectively, of the player's total applicable minimum salary for the picture.

d) The provisions of this subsection (b)(1) shall not apply to reruns of television motion pictures, principal photography of which was completed prior to July 1, 1971.

(2) *Second runs and third runs where such runs include telecasting of the picture over a television network but not in prime time:*

a) For the second run, player shall be paid 50% of his total applicable minimum salary.

b) For the third run, player shall be paid 40% of his total applicable minimum salary.

(3) *All runs not covered in (1) and (2) above:*

a) For the second run, player shall be paid 40% of his total applicable minimum salary.

b) For the third run, player shall be paid 30% of his total applicable minimum salary.

c) For the fourth run, player shall be paid 25% of his total applicable minimum salary.

d) For the fifth run, player shall be paid 25% of his total applicable minimum salary.

e) For the sixth run, player shall be paid 25% of his total applicable minimum salary.

f) For the seventh run, player shall be paid 15% of his total applicable minimum salary.

g) For the eighth run, player shall be paid 15% of his total applicable minimum salary.

h) For the ninth run, player shall be paid 15% of his total applicable minimum salary.

i) For the tenth and all additional runs, a single additional fee of 15% of the player's total applicable minimum salary.

The "total applicable minimum salary" is the total minimum salary for the type of contract under which the player was employed, for the period of the player's employment in the television motion picture.

* * *

(e) All payments of additional compensation for reruns, theatrical exhibition or foreign telecasts shall be made promptly by check, payable to the order of the player entitled thereto, and if not initially paid to the player, shall be delivered to Screen Actors Guild for forwarding to such player and compliance herewith shall constitute payment to the player. The Producer shall accompany such checks with a statement of the title of the film and the use for which such payment is made. If Producer fails to pay such additional compensation when due and payable, Producer shall pay a late-payment penalty of 1½% per month on the unpaid balance commencing to accrue from the date of the delinquency.

The Producer shall keep or have access to (i) complete records showing all cities in the United States and Canada in which all television motion pictures subject to this Agreement have been telecast and the number of telecasts in each such city, the television stations on which telecast, and the dates thereof, and (ii) complete records showing Distributor's Foreign Gross for such pictures to the extent that such records are pertinent to the computation of payments for foreign telecasting. Producer shall also keep or have access to such records as are necessary for the computation of additional compensation for reruns and foreign telecasts for so long as such rerun or foreign telecast payments may be due or payable. Screen Actors Guild shall have the right, at all reasonable times, to inspect such records. The undersigned shall give Screen Actors Guild prompt written notice of the date on which each television motion picture covered hereby is first telecast in any city in the United States and Canada for the second run and for each subsequent run thereafter to and including the tenth run.

* * *

21. Responsibility for Payment of Residuals—Distributor's Liability and Producer's Liability.

This Section applies to all residuals as defined in Section 41 hereof.

(a) If a signatory Producer produces a television motion picture of which it is not the distributor and enters into a distribution agreement with a

distributor who is not a signatory to the 1971 Screen Actors Guild Television Agreement, Producer shall forthwith upon entering into such distribution agreement, obtain from the distributor and deliver to the Guild a separate written agreement, herein called "Television Distributor's Assumption Agreement," made expressly for the benefit of the Guild as representative of the players involved, by which such distributor agrees to assume and pay all residuals which become payable by reason of distribution under such distribution agreement as and when the same become due.

In the event of the expiration or termination of any such distribution agreement, the obligation of Producer to obtain and deliver to the Guild such Television Distributor's Assumption Agreement shall apply as well to any subsequent distribution agreement entered into by Producer with a non-signatory, and Producer shall obtain and deliver an executed Television Distributor's Assumption Agreement within ten days after the execution of each such subsequent distribution agreement.